



21 June 2011

MEMORANDUM

TO: Carrie Cihak, Executive's Office, Policy and Strategic Initiatives Director

FROM: Jennifer Stacy, Senior Deputy Prosecuting Attorney
Darren Carnell, Senior Deputy Prosecuting Attorney

SUBJECT: Update of the Countywide Planning Policies and the Policy Regarding Sewer in the Rural Area.

In the context of proposed revised Countywide Planning Policy PFS-12, which “prohibit[s] sewer expansion in Rural Areas and resource lands except where needed to address specific health and safety problems threatening existing structures,” you have asked us to discuss the relevant Growth Management Act (“GMA”) requirements and case law addressing sewer in the rural area.

The GMA provides that “cities are the units of local government most appropriate to provide urban governmental services” and that “it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.” RCW 36.70A.110(4). Urban governmental services are defined to include sanitary sewer systems. RCW 36.70A.030(18).

The leading case on the issue of sewer in the rural area is Thurston County v. Cooper Point Assoc., 148 Wn.2d 1 (2002). In that case, the Washington Supreme Court concluded that the area in question was indeed rural and that the County’s proposed sewer line constituted an impermissible expansion of an urban governmental service, in contravention of the GMA provisions cited above. See id. at 8-11. The court further determined that the proposed sewer line was not necessary to protect basic public health and safety and the environment as concerns about *potential* wastewater management problems in the future were insufficient to meet the definition of necessary. See id. at 11-15 (applying a restrictive definition of the term “necessary,” to mean indispensable or absolutely required).

Proposed Countywide Planning Policy PFS-12 tracks both the GMA and the relevant case law in that it prohibits the expansion of sewer into the rural area, yet does allow for exceptions when necessary to address health and safety issues.

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We would also observe that there is a more general underlying GMA issue involving what uses are appropriately allowed in the rural area. While the rural area is largely limited to residential and resource uses, more intensive uses “may be allowed in the rural area if “the use, by its very nature, is dependent upon being in a rural area and is compatible with the functional and visual character of rural uses in the immediate vicinity.” Timberlake Christian Fellowship v. King County, 114 Wn.App. 174, 184 (2002) (citations omitted). Although this limitation does not directly involve the sewer question you raised, there may be an issue about the extent to which schools are dependent on being in the rural area. If a use is so intensive that it requires sewer, it is arguably too intensive for the rural area. One argument for locating a new school in the rural area would be that the school is necessary to serve children who live in the rural area. However, our understanding is that the schools currently contemplated for location in the rural area would be serving primarily children from the urban area. Such a school would not appear to be “dependent” on being in the rural area, nor, if it required sewer, would its intensity of use be compatible with the functional and visual character of rural uses in the vicinity.

We would be happy to discuss with you further any of the issues or legal authority cited in this memorandum.